

IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. **78-1056**

HAZEL RUTH LOGAN, et al.,

Appellants.

v.

W. E. STRICKLAND, Comr., et al.,

Appellees.

ON APPEAL FROM THE
SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-

HAZEL RUTH LOGAN, et al, Appellants

v.

W.E. STRICKLAND, Comr., et al, Appellees

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

Appellants, Hazel Ruth Logan, Individually, Grady Moss, Individually, Yellow Jacket Market, Inc., H. W. Smith, Individually, Jet Stop Markets, Inc., and Emory B. Bazemore, Individually, appeal from the final judgment of the Supreme

Court of Georgia entered September 6, 1978, holding that Ga.L. 1978, p. 3003, which repeals the charter of the city of Mountain View, Georgia does not impair the obligation of contracts in violation of the contract clause of the United States Constitution.

OPINION BELOW

The opinion of the Supreme Court of Georgia, which appears in the Appendix hereto, p. 1a, *infra*, is reported at 242 Ga. 163 (SE2d)(1978).

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on September 6, 1978. See p. 12a, *infra*. A Motion for Rehearing was entertained and denied by Order entered September 26, 1978. See p. 13a, *infra*. A Notice of Appeal to

this Court was filed on September 26, 1978. See p. 14a, *infra*. A 15 day extension of time in which to docket this Appeal was granted by Order of this Court dated December 22, 1978, which extended the time in which to docket this case to and including January 8, 1979; this Appeal is being docketed within the time so extended.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(2).

QUESTION PRESENTED

Is the contract clause of the United States Constitution violated where holders of alcoholic beverage and grocery business licenses issued by a municipality have reasonably relied on its continuing existence in incurring contractual obligations, and the Georgia Legislature,

with no indication of legislative intent, abolishes the municipality by statute having immediate effect thereby causing total destruction of contractual expectation relating to alcoholic beverage licenses, and substantial and severe disruption as to grocery business licenses, and the Legislature fails to enact any of several policy alternatives available to minimize the effect of the interference with reasonable reliance interests.

CONSTITUTIONAL PROVISIONS AND STATUTES

Article 1, Section 10, Paragraph 1, United States Constitution:

"No State shall . . . pass any . . . law impairing the obligation of contracts . . ."

Ga. L. 1978, p. 3003, a local Act, approved January 20, 1978, repealed the charter of the City of Mountain View, Georgia:

"Section 1. An Act entitled 'An Act to Create and Incorporate the City of Mountain View, in the County of Clayton, Georgia, and Grant a Charter to that Municipality . . .' is hereby repealed in its entirety."

The text of Ga. L. 1978, p. 3003, is set out in full in the Appendix, p. 8a, infra.

RAISING THE FEDERAL QUESTION

The Supreme Court of Georgia expressly rejected Appellants' constitutional claim, p. 6a, infra:

"5. The Act of the General Assembly revoking the charter of the City of Mountain View does not operate to impair the obligation of contracts claimed under by the parties in these actions in violation of state or federal Constitution."

STATEMENT OF THE CASE

Appellants Yellow Jacket Market, Inc. and Jet Stop Markets, Inc. each hold an alcoholic beverage license and a grocery license issued by the City of Mountain View, Georgia. Each of the individual appellants has an interest in the continuing operation of businesses engaged in the sale of alcoholic beverages and groceries under such licenses, and appellants H. W. Smith and Emory B. Bazemore have incurred substantial personal obligations in regard to incidents of the business operating under the licenses issued to Yellow Jacket Market, Inc. and Jet Stop Markets, Inc., respectively. In the event the constitutionality of the statute abolishing the City of Mountain View is upheld, the alcoholic beverage licenses will be terminated

and substantial contractual obligations incurred consistent with the operation of a business selling alcoholic beverages will remain to be performed.

Ga. L. 1978, p. 3003, p. 8a, *infra*, was attacked in two related actions seeking declaratory and injunctive relief filed in the Superior Court of Clayton County, and each action was dismissed by the same Order entered March 3, 1978, which granted a stay order authorizing the City of Mountain View to continue its normal operations under its charter pending final disposition. See p. 15a, *infra*. Plaintiffs in the related action, the City of Mountain View, Georgia, certain of its officials, and a citizen and voter of the City, appealed from the Order of the Superior Court of Clayton County to the Supreme Court

of Georgia. Appellants in this case also appealed to the Supreme Court of Georgia which dealt with both cases in its opinion rendered September 6, 1978. The City of Mountain View, Georgia, et al, have docketed an appeal in this Court, No. 78-1010.

THE QUESTION IS SUBSTANTIAL

The contractual obligations herein are of two distinct characters. First, the contract expectation in the exercise of the rights granted under the alcoholic beverage license itself and the concomittant expectation to the financial benefits to be derived therefrom for the duration of the license term and the duration of reasonably expected renewal terms. The opinion below rejected any

notion of a property right in an alcoholic beverage license, holding that "these licenses are not revoked as a result of the issuing authority; thereby Hornsby v. Allen 326 F.2d 605 (5th Cir. 1964) and other federal cases dealing with due process are inapposite." The Supreme Court of Georgia determined that under the circumstances of this case, that appellants had no property rights recognizable under constitutional analysis.

The second contract expectation involves the contractual obligations incurred by the appellants incident to the holding of an alcoholic beverage license and a grocery license. These include substantial obligations involving leases of premises, interest in equipment and fixtures necessary to operation of a business selling alcoholic

beverages in a high traffic location but unnecessary and highly economically disadvantageous to the operation of a business selling groceries without an alcoholic beverage license.

In Allied Structural Steel Company v. Spannus, 98 S.Ct. 2716 (1978), the Court said:

"The most recent Contract Clause case in this Court was United States Trust Co. v. New Jersey, 431 U.S. 1, 97 S.Ct. 1505, 52 L.Ed.2d 92. In that case, the Court again recognized that although the absolute language of the Clause must leave room for 'the essential attributes of sovereign power,' id., at 435, necessarily reserved by the States to safeguard the welfare of their citizens,' id., at 21, 97 S.Ct. at 1517, that power has limits

when its exercise effects substantial modifications of private contracts. Despite the customary deference courts give to state laws directed to social and economic problems, '(l)egislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption.'"

Id. at p. 2722.

"In applying these principles to the present case, the first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may

end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.

"The severity of an impairment of contractual obligations can be measured by the factors that reflect the high value the Framers placed on the protection of private contracts. Contracts enable individuals to order their personal and business affairs according to their particular needs and interest. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them."

Id. at 2723.

In enacting the statute complained of, the Georgia Legislature expressed

no legislative intent whatever. See p. 8a, *infra*, so that analysis of legislative intent would appear to be reduced to mere speculation; however, the fact that the act was given immediate effect is so unreasonable on its face in the context of abolition of a city that the usual presumption of legislative good faith should not be indulged.

The Georgia Legislature failed to select any of several policy alternatives available to minimize the effect of abolition of the City upon holders of business licenses. One such alternative is to provide for a grace period to allow for adjustment to the new governmental structure and to minimize losses. A second alternative is to provide for automatic issuance of

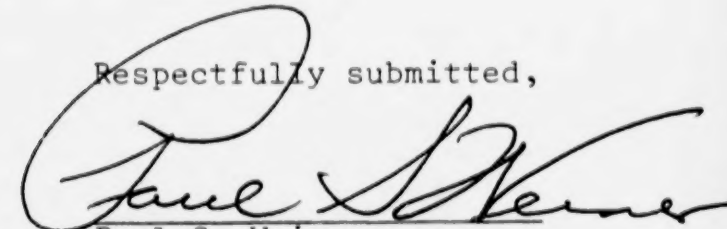
licenses by the new governing authority, and renewal of such licenses for a reasonable period. A third alternative is to compensate business license holders for actual losses suffered in reasonable reliance upon the continuing existence of the City payable from funds in the City treasury available after discharge of every other class of legal debt.

The Georgia Legislature failed to take into account, even in the most minimal way, reasonable reliance interests in the continuing existence of the City in enacting Ga.L. 1978, p. 3003, thereby violating the Contract Clause; and the Supreme Court of Georgia erred in upholding the validity of the Statute as against an attack under the Contract Clause.

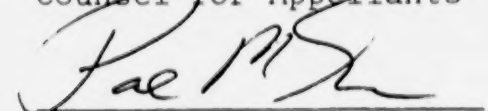
CONCLUSION

For these reasons, this Court should note probable jurisdiction of this Appeal.

Respectfully submitted,



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APPENDIX A

33622. CITY OF MOUNTAIN VIEW et al. v.
CLAYTON COUNTY et al.

33623. BOLTON v. CITY OF MOUNTAIN VIEW et al.
33625, 33626. LOGAN et al. v. STRICKLAND et al.;
and vice versa.

UNDERCOFLER, Presiding Justice.

Georgia L. 1978, p. 3003, a local Act, approved January 20, 1978, repealed the City of Mountain View's charter. Ga. L. 1956, p. 2518. Officials of Mountain View and persons holding city alcoholic beverage licenses brought suits challenging the validity of the 1978 Act. They contend that (1) the publisher's affidavit certifying the publication of notice of intention to introduce into the General Assembly local legislation to repeal Mountain View's charter does not comply with the requirements of the Georgia Constitution, (2) a city charter may not be repealed without a referendum, (3) a city charter may not be repealed by a local Act, (4) the repeal of a city charter is prohibited by the "home rule" provisions of the Georgia Constitution, and (5) the 1978 Act repealing Mountain View's charter impairs the obligation of contracts. The trial court held the 1978 Act valid. We affirm.

1. Appellants argue that the publisher's affidavit¹

¹ The Affidavit of Publication attached to the

attached to the 1978 enrolled Act does not comply with the Georgia constitutional mandate² because it failed to state (1) that the notice was published "as provided by law," (2) that the News/Daily is a newspaper in which sheriff's advertisements for the locality are published, and (3) the year of the first two dates of publication, to wit: "December 20, 27," is not shown.

enrolled bill and made a part of the statute reads as follows: "State of Georgia, County of Clayton. Personally appeared before the undersigned Jim Wood, Publisher, who on oath says that he is Publisher of News/Daily, and that the legal advertisement which appears below was published in said newspaper on the following dates: December 20, 27 and January 3, 1978. Jim Wood (Seal), /s/ Jim Wood, Publisher."

"Notice of Intention to Introduce Local Legislation. Notice is hereby given that there will be introduced at the regular 1978 session of the General Assembly of Georgia, a bill to repeal the Act incorporating the City of Mountain View in the County of Clayton, Georgia, approved February 23, 1956 (Ga. L. 1956, p. 2518), as amended, and for other purposes.

This 20th day of December, 1977.

/s/ Rudolph Johnson
Representative, 72nd District
/s/ William J. Lee
Representative, 72nd District
/s/ Jim Wood
Representative, 72nd District
/s/ Jimmy Benefield
Representative, 72nd District
/s/ Terrell A. Starr
Senator, 44th District"

² "No local or special bill shall be passed, unless notice of the intention to apply therefor shall have been published in the newspaper in which the Sheriff's advertisements for the locality affected are published, once a week for three weeks during a period of sixty days immediately preceding its introduction into the General Assembly. No local or special bill shall become law unless

An affidavit of publication of notice of intention to introduce a local Act into the General Assembly is essential to its validity. *Smith v. McMichael*, 203 Ga. 74 (45 SE2d 431) (1947). It certifies that the local people were notified of the proposed legislation as required by law. However, no particular form of affidavit is required. It suffices if a reasonable interpretation shows compliance with the constitutional provision. In our opinion the affidavit here is adequate. The newspaper in which the notice appeared is named. The publisher certified that the notice was a "legal advertisement" which is tantamount to certifying that the newspaper was the official organ of the county in which sheriff's advertisements are published. The notice is dated December 20, 1977, a Tuesday. The publisher certified the notice was published "December 20, 27 and January 3, 1978." We take judicial notice that these dates are successive Tuesdays. It is apparent that December 20 is December 20, 1977, the date of the notice itself, and that the notice was published again the following Tuesday, December 27, 1977, and finally the following Tuesday, January 3, 1978, after which the Act was introduced into the General Assembly on January 9, 1978. *Cain v. Lumpkin County*, 229 Ga. 274 (190 SE2d 910) (1972). Appellants do not claim the affidavit is fraudulent. We find the affidavit shows publication in the newspaper in which sheriff's advertisements for the locality affected are published once a week for three weeks during a period of sixty days immediately preceding its introduction into the General Assembly "as provided by law." The constitutional provision has been satisfied here.

2. Appellants argue the General Assembly does not have the power to abolish the charter of a municipality without a referendum submitted to the people of the area affected because this violates the constitutional provision

there is attached to and made a part of said bill a copy of said notice certified by the publisher, or accompanied by an affidavit of the author, to the effect that said notice has been published as provided by law. . . Ga. Const., 1976, Art. III, Sec. VII, Par. IX (Code Ann. § 2-1309).

prohibiting the abolishing of elective office during term.³ This provision was intended to correct an evil often practiced in this state, i. e., the use of local legislation specifically directed to amending or abolishing the term of a specified elective office to remove an incumbent or prolong his tenure. See Records of the Constitutional Commission, 1943-44, Vol. I, pp. 351-352. This language may not be extended by implication to place a restraint upon the general power of the General Assembly to create or abolish the charters of municipal corporations, either by local or general law.

"... [M]unicipalities are creatures of the legislature, and their existence may be established, altered, amended, enlarged or diminished, or utterly abolished by the legislature." *Troup County Elec. Membership Corp. v. Ga. Power Co.*, 229 Ga. 348, 352 (4) (191 SE2d 33) (1972) and *cits.*

3. Appellants argue that the General Assembly has provided for the self-government of municipalities by general law, as authorized by the Georgia Constitution⁴ and it may not now legislate in this area by local Act. We do not agree. Appellants overlook Ga. L. 1965, p. 298 (Code Ann. § 69-1016) wherein the General Assembly specifically reserved the right to dissolve municipalities

³"... No office to which a person has been elected shall be abolished, nor the term of the office shortened or lengthened by local or special bill during the term for which such person was elected unless the same be approved by the people of the jurisdiction affected in a referendum on the question. . ." Ga. Const. 1976, Art. III, Sec. VII, Par. IX (Code Ann. § 2-1309).

⁴"The General Assembly is authorized to provide by law for the self-government of municipalities and to that end is hereby expressly given the authority to delegate its powers so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly. Any powers granted as provided herein shall be exercised subject only to statutes of general application pertaining to municipalities." Ga. Const., 1976, Art. IX, Sec. III, Par. I (Code Ann. § 2-6001).

by local Act.⁵ *Lee v. City of Jesup*, 222 Ga. 530 (150 SE2d 836) (1966). See also *State of Ga. v. Golia*, 235 Ga. 791 (222 SE2d 27) (1976); *Bruck v. City of Temple*, 240 Ga. 411 (240 SE2d 876) (1977). Ga. L. 1947, p. 1545 (Code Ann. § 69-105), is inapposite. It authorizes the superior court to dissolve municipalities which have not functioned for a period of ten years.

4. There is no merit in appellants' argument that the "Supplementary Home Rule" provision of the Georgia Constitution⁶ vests municipalities with almost autonomy and the General Assembly is powerless to withdraw the powers granted by the Constitution.

This provision provides uniformity of certain powers of municipalities, not autonomy. The General Assembly may not remove these powers in a random fashion. However, it does not operate to abolish the General Assembly's plenary power to create and dissolve municipal corporations. See *City of Atlanta v. Myers*, 240 Ga. 261 (240 SE2d 60) (1977).

5. The Act of the General Assembly revoking the charter of the City of Mountain View does not operate to impair the obligation of contracts claimed under by the parties in these actions in violation of state or federal

⁵"No municipality shall be incorporated, dissolved, merged or consolidated with any other municipality or municipal boundaries changed, except by local Act of the General Assembly or by such methods as may be provided by general law."

⁶"Except as otherwise provided in this Paragraph as to planning and zoning, nothing contained within this Paragraph shall operate to prohibit the General Assembly from enacting general laws relative to the above subject matters or to prohibit the General Assembly by general law from regulating, restricting or limiting the exercise of the above powers, but, the General Assembly shall not have the authority to withdraw any such powers. The General Assembly shall act upon the above subject matters only by general law." Ga. Const., 1976, Art. IX, Sec. IV, Par. II (Code Ann. § 2-6102).

Constitution. The offices of city judge, clerk and chief of police are public offices authorized under the charter of the City of Mountain View. The right of an incumbent to an office depends upon the law under which he holds. If the law is capable of being repealed, the right of the officer is gone. See *City Council of Augusta v. Sweeney*, 44 Ga. 463, 466 (1870); *Smith v. Abercrombie*, 235 Ga. 741, 749 (221 SE2d 802) (1975). Also, we have consistently held that holders of alcoholic beverage licenses do not acquire property rights when granted a beverage license under the police power. *McKown v. City of Atlanta*, 184 Ga. 221, 222 (190 SE 571) (1937). Such licenses also do not acquire the status of vested property rights as argued by appellants. See *Thacker v. Morris*, 196 Ga. 167 (26 SE2d 329) (1943). These licenses are not revoked as the result of an act of the issuing authority; therefore, *Hornsby v. Allen*, 326 F2d 605, and other federal cases dealing with due process issues are inapposite.

Judgment affirmed in Cases Nos. 33622 and 33625; cross appeals in Cases Nos. 33623 and 33626 dismissed. All the Justices concur.

ARGUED JUNE 12, 1978 — DECIDED SEPTEMBER 6, 1978 —
REHEARING DENIED SEPTEMBER 26, 1978 IN CASES NOS. 33622 AND 33625.

Repeal of municipal charter; constitutional question. Clayton Superior Court. Before Judge Morgan, Senior Judge.

Wesley R. Asinof, for appellants (Case No. 33622).

Arthur K. Bolton, Attorney General, Michael J. Bowers, Senior Assistant Attorney General, Glaze, McNally & Glaze, George E. Glaze, Kirby A. Glaze, John R. McCannon, for appellees (Case No. 33622).

Michael J. Bowers, Senior Assistant Attorney General, Arthur K. Bolton, Attorney General, for appellant (Case No. 33623).

George E. Glaze, John R. McCannon, Wesley R. Asinof, Clarence L. Leathers, Jr., for appellees (Case No. 33623).

Douglas N. Peters, Emory B. Bazemore, for appellants (Case No. 33625).

John R. McCannon, George E. Glaze, Arthur K.

Bolton, Attorney General, Michael J. Bowers, Senior Assistant Attorney General, for appellees (Case No. 33625).

Arthur K. Bolton, Attorney General, Michael J. Bowers, Senior Assistant Attorney General, for appellants (Case No. 33626).

George E. Glaze, John R. McCannon, Douglas N. Peters, Emory B. Bazemore, for appellees (Case No. 33626).

APPENDIX "B"

LOCAL AND SPECIAL
ACTS AND RESOLUTIONS
OF THE
GENERAL ASSEMBLY
of the
STATE OF GEORGIA

1978

City of Mountain View — Charter Repealed
No. 757 (House Bill No. 1228).

AN ACT

To repeal an Act entitled "An Act to create and incorporate the City of Mountain View, in the County of Clayton, Georgia, and grant a charter to that municipality under that name and style; to prescribe and define the corporate limits thereof; to provide a municipal government for said city, and to declare the rights, powers, privileges and liabilities of said corporation; to authorize said city to levy and collect a tax for purposes authorized herein; to authorize the construction of waterworks, sewers, streets, parks, and to provide for the payment of the same; to provide for granting franchises to persons, firms or corporations

for construction and maintenance of public utilities; to declare and define the police powers of said city; to declare and define the duties and powers of the officers of said city; to provide for the election of a mayor and council of said city; to provide for passage of ordinances and granting licenses for the conduct of business; to provide for a referendum before this Act becomes effective; and for other purposes.", approved February 23, 1956 (Ga. Laws 1956, p. 2518), as amended by an Act approved April 21, 1967 (Ga. Laws 1967, p. 3323); an Act approved April 25, 1969 (Ga. Laws 1969, p. 3636) and by an Act approved March 31, 1976 (Ga. Laws 1976, p. 3970); to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An Act entitled "An Act to create and incorporate the City of Mountain View, in the County of Clayton, Georgia, and grant a charter to that municipality under that name and style; to prescribe and define the corporate limits thereof; to provide a municipal government for said city, and to declare the rights, powers, privileges and liabilities of said corporation; to authorize said city to levy and collect a tax for purposes authorized herein; to authorize the construction of waterworks, sewers, streets, parks, and to provide for the payment of the same; to provide for granting franchises to persons, firms or corporations for construction and maintenance of public utilities; to

declare and define the police powers of said city; to declare and define the duties and powers of the officers of said city; to provide for the election of a mayor and council of said city; to provide for passage of ordinances and granting licenses for the conduct of business; to provide for a referendum before this Act becomes effective; and for other purposes.", approved February 23, 1956 (Ga. Laws 1956, p. 2518), as amended by an Act approved April 21, 1967 (Ga. Laws 1967, p. 3323), an Act approved April 25, 1969 (Ga. Laws 1969, p. 3636) and by an Act approved March 31, 1976 (Ga. Laws 1976, p. 3970), is hereby repealed in its entirety.

Section 2. All laws and parts of laws in conflict with this Act are hereby repealed.

Notice

Notice of Intention to Introduce Local Legislation.

Notice is hereby given that there will be introduced at the regular 1978 session of the General Assembly of Georgia, a bill to repeal the Act incorporating the City of Mountain View in the County of Clayton, Georgia, approved February 23, 1956 (Ga. Laws 1956, p. 2518), as amended, and for other purposes.

This 20th day of December, 1977.

/s/ Rudolph Johnson

Representative,
72nd District

/s/ William J. Lee

Representative,
72nd District

/s/ Jim Wood

Representative,
72nd District

/s/ Jimmy Benefield

Representative,
72nd District

/s/ Terrell A. Starr

Senator, 44th District

Georgia, Clayton County.

Personally appeared before the undersigned Jim Wood, Publisher, who on oath says that he is the Publisher of News/Daily, and that the legal advertisement which appears above was published in said newspaper on the following dates: December 20, 27, 1977 and January 3, 1978.

/s/ Jim Wood

Publisher

Sworn to and subscribed before me,
this 4th day of January, 1978.

APPENDIX C

33625

SUPREME COURT OF GEORGIA

Atlanta, September 6, 1978

The Honorable Supreme Court met
pursuant to adjournment.

The following was rendered:

Hazel Ruth Logan, et al v.

W. E. Strickland, Comr., et al

This case came before this court
upon an appeal from the Superior Court
of Clayton County, and, after argument
had, it is considered and adjudged that
the judgment of the court below be af-
firmed. All the Justices concur.

APPENDIX D

33625

SUPREME COURT OF GEORGIA

Atlanta, September 26, 1978

The Honorable Supreme Court met pur-
suant to adjournment.

The following order was passed:

Hazel Ruth Logan, et al v.

W. E. Strickland, Comr., et al

Upon consideration of the motion for
rehearing filed in this case, it is ordered
that it be hereby denied.

APPENDIX E

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that the Appellants, above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court For The State of Georgia affirming the decision of the Superior Court of Clayton County in holding that Georgia Laws, 1978, Page 3003, approved January 20, 1978, repealing the Charter for the City of Mountain View was not in contravention of the United States Constitution entered in this action on September 6, 1978.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

/s/ Douglas N. Peters
DOUGLAS N. PETERS
Attorney for Appellants

/s/
EMORY B. BAZEMORE
Attorney for Appellants

APPENDIX F
ORDER

This Court has found that Act No. 757 of the 1978 Session of the General Assembly, which had the effect of repealing the Act which created the City of Mountain View, is not unconstitutional for any reason advanced by the Plaintiffs in the above-referenced cases. As a result, unless that order is appealed to a higher tribunal, the City of Mountain View will cease to exist upon the entering of the final judgment in these cases. Such an action obviously will affect a great number of persons, notably the residents of the City of Mountain View. Therefore, in an effort to maintain the status quo until such time as an appeal from that order is filed, and, if an appeal is in fact filed, until such time as the appropriate appellate court of this State has finally ruled as to the validity of Act No. 757, it is the intent of this Court to enjoin the Defendants in a manner so as to preserve the status quo between the parties to these suits.

Therefore, subject to the conditions imposed below, this Court herewith enjoins the Defendants in each of the above-referenced cases from interfering with the ordinary functions of the operation of the City of Mountain View for a period of ten days after the entry of this order.

If at the end of the ten day period, the plaintiffs have not filed with this Court a notice of appeal from this Court's decision in the above-referenced cases, this injunction shall stand dissolved.

If within the ten days, the Plaintiffs have filed with this Court their notice of appeal to the appropriate state appellate court, the injunction granted above shall continue in force and effect until such time as the proper state appellate court has entered its final determination as to the constitutionality of Act No. 757 of the 1978 Session of the General Assembly of Georgia. Pursuant to this injunction, the Defendants are enjoined and restrained subject to the time constraints noted above, from interfering with the Plaintiffs in the carrying out of their normal functions of government of that portion of Clayton County set apart as the City of Mountain View, Georgia by Ga. L. 1956, p. 2518, as amended. The normal functions of government are hereby defined as being police protection, fire protection, the operation of the City Hall, the operation of the Recorder's Court, the enforcement of municipal ordinances, meetings of the City Council, garbage and refuse pick-up, payment of salaries to municipal employees, the furnishing of services to the citizens of the City and all other governmental functions normally performed by the municipality. Moreover, during the pendency of this injunction, all valid business licenses, including alcoholic beverage licenses previously issued shall remain in force and effect until they expire by their terms, and plaintiffs are authorized to carry out and perform such duties as have been conferred upon them by Ga.L. 1956, p. 2518, as amended and all such acts being approved prior to January 20, 1978.

As a condition to the grant of this injunction, those Plaintiffs in the two suits who are officials or employees of the City of Mountain View are prohibited from engaging in or carrying out any function which would not serve to preserve the status quo between the parties during the pendency of the injunction. Specifically, the Plaintiffs are prohibited from dissipating any municipal assets or incurring any debt which either by the frequency of occurrence or by its size constitutes a significant departure from the City's past practices. The Plaintiffs are prohibited from disbursing any monies to their officers and employees other than those salaries which are presently being paid.

As noted, it is the specific intent of this Court, in granting this injunction, to maintain the status quo between the Plaintiffs. Further, this injunction is conditioned upon the Plaintiffs committing no act which will operate to thwart the Court's expressed intent.

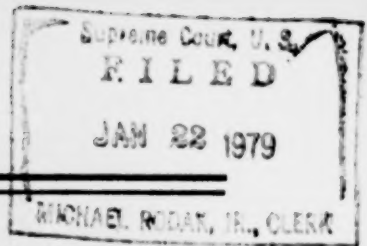
It is also the intent of the Court that Bennett G. Cloy shall continue to serve as the representative of this Court for the purpose of acting as its representative to audit and inventory all property, records, files, ledgers, minute books, checkbooks, bank records, bank accounts, audit reports and any and all other records relating to the finances or monetary income disbursed by the City of Mountain View. Said representative shall have the authority to examine any of these documents at any time he deems necessary. This injunction is further conditioned upon the Plaintiff's

providing said representative access to such documents.

It is the intent of this order that the Final Judgment and Decree of the Court entered this date in the foregoing cases, and the effect of Act No. 757 of the 1978 session of the General Assembly may have upon the Charter of the City of Mountain View be stayed and superseded until the Final Judgment of the proper Appellate Court of this State.

IT IS SO ORDERED, this 3rd day of March, 1978.

/s/ HUBERT C. MORGAN
HON. HUBERT C. MORGAN,
Judge Emeritus
Clayton Superior Court



IN THE
Supreme Court of the United States

October Term, 1978

NO. 78-1056

HAZEL RUTH LOGAN, et al.,
Appellants,

v.

W. E. STRICKLAND, Commissioner, et al.,
Appellees.

On Appeal From The Supreme Court Of Georgia

**MOTION OF APPELLEES W. E. STRICKLAND,
GEORGIA STATE REVENUE COMMISSIONER,
ARTHUR K. BOLTON, ATTORNEY GENERAL
OF THE STATE OF GEORGIA, AND
J. H. COFER, COMMISSIONER OF THE
GEORGIA DEPARTMENT OF PUBLIC SAFETY,
TO DISMISS OR AFFIRM**

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant Attorney General

DON A. LANGHAM
First Assistant Attorney General

MICHAEL J. BOWERS
Senior Assistant Attorney General

R. DOUGLAS LACKEY
Assistant Attorney General

*Counsel for Appellees W. E. Strickland,
Arthur K. Bolton and J. H. Cofer*

132 State Judicial Building
Atlanta, Georgia 30334

January, 1979

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IN THE Supreme Court of the United States

October Term, 1978

NO. 78-1056

HAZEL RUTH LOGAN, et al.,
Appellants,

v.

W. E. STRICKLAND, Commissioner, et al.,
Appellees.

On Appeal From The Supreme Court Of Georgia

**MOTION OF APPELLEES W. E. STRICKLAND,
GEORGIA STATE REVENUE COMMISSIONER,
ARTHUR K. BOLTON, ATTORNEY GENERAL
OF THE STATE OF GEORGIA, AND
J. H. COFER, COMMISSIONER OF THE
GEORGIA DEPARTMENT OF PUBLIC SAFETY,
TO DISMISS OR AFFIRM**

The appellees W. E. Strickland, Georgia State Revenue Commissioner, Arthur K. Bolton, Attorney General of the State of Georgia, and J. H. Cofer, Commissioner of the Georgia Department of Public Safety, respectfully move to dismiss this appeal or to affirm the decision of the Supreme Court of Georgia in this case. Rule 16(1) (a) and (c).

CONSTITUTIONAL PROVISION INVOLVED

Article I, Section 10, Paragraph I

No State shall . . . pass any . . . Law impairing the
Obligation of Contracts. . . .

QUESTION PRESENTED

Whether the termination of a municipal business license by virtue of the repeal by the General Assembly of Georgia of a municipal charter violates the Contract Clause of the United States Constitution as to the license holders.

MOTION TO DISMISS

The appellees Strickland, Bolton and Cofer move to dismiss the appeal on the ground that with the passage of time this appeal has been rendered moot thus removing it from the jurisdiction of this Court.

The business licenses, which are set forth in Appendices A, B, C and D and which are the subject matter of this litigation, reflect on their faces that they expire effective December 31, 1978. Thus, the licenses, and such contracts as they constitute between the appellants and the City of Mountain View, have by their own terms ceased to exist. The rights of the appellants in such licenses have likewise expired. The appellants therefore seek to invoke the appellate jurisdiction of this Court as to a question which is now moot. This they may not do. *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975).

In that the controversy is moot, the appeal should be dismissed.

MOTION TO AFFIRM

Alternatively, the appellees Strickland, Bolton and Cofer move to affirm the decision of the Supreme Court of Georgia on the ground that it is manifest that the question on which the decision of the cause depends is so insubstantial and the decision below is so obviously correct as not to need further argument.

The appellants contend in their Jurisdictional Statement (pp. 8-9) that the repeal ¹ of the charter of the City of Mountain View impaired two types of contractual obligations as to them. The first type of obligation concerns alleged contracts, evidenced by business licenses and alcoholic beverage licenses,² between the appellants, as license holders, and the municipality. The second type of obligation concerns agreements between the appellants and other private parties involving such matters as leases of premises and equipment.

I. THE APPELLANTS MAY NOT NOW RAISE CLAIMS CONCERNING ALLEGED CONTRACTS BETWEEN THEMSELVES AND OTHER PRIVATE PARTIES.

Before the Supreme Court of Georgia, the appellants did not properly raise any issue concerning the second type of contractual obligation described above. In particular, the enumeration of errors filed by the appellants in the Supreme Court of Georgia sets forth in error number 2 only the failure of the trial court to hold that Act No. 757 "... has the direct affect [sic] of impairing the obligations of the contractual licenses previously entered into between the City of Mountain View and the Appellants. . . ."³ [Emphasis added.] Further, the appellants made no mention in their enumeration of errors of any agreement entered into between them and other private parties, such as they now assert in their jurisdictional statement. Similarly, no mention of such alleged agreements was made in the decision by the Supreme Court of Georgia.⁴

¹ The municipal charter was repealed by Act No. 757 [(Ga. Laws 1978, p. 3003) Jurisdictional Statement, Appendix "B"].

² Appendices A, B, C and D.

³ Appendix E.

⁴ Jurisdictional Statement, Appendix A.

It is axiomatic that the appellants are barred from raising in this Court any issue as to alleged agreements between themselves and other private parties when such issue was not properly raised before the State's highest court. *Street v. New York*, 394 U.S. 576, 582 (1969).

II. THE TERMINATION OF A MUNICIPAL BUSINESS LICENSE INCIDENTAL TO THE REPEAL OF A MUNICIPAL CHARTER DOES NOT VIOLATE THE CONTRACT CLAUSE.

Assuming arguendo that a municipal business license is a contract, it is nevertheless clear that the laws which existed at the inception of the contractual relationship form a part of the contract as if such laws were expressly referred to or incorporated into the terms of such contract. *Van Hoffman v. City of Quincy*, 4 Wall. 535, 550 (1866).

Long before the General Assembly of Georgia created the City of Mountain View in 1956,⁵ this Court had recognized the virtual absolute control of State legislatures over municipalities. *Trenton v. New Jersey*, 262 U.S. 182 (1923); *Hunter v. Pittsburgh*, 207 U.S. 161 (1907).⁶ The law of the State of Georgia had similarly recognized control of the existence of municipalities by the legislature. In upholding a legislative act giving county commissioners control of the City of Darien, the Supreme Court of Georgia held:

"The corporation of the city of Darien is the creature of the general assembly. That creative power may dissolve, modify, or limit its corporate powers at will." *Churchill v. Walker*, 68 Ga. 681, 686 (1882).

⁵ The City of Mountain View was created by Ga. Laws 1956, p. 2518.

⁶ See also, *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

The principle set forth in *Churchill v. Walker*, *supra*, has not been of mere historical importance. See *Troup County Electric Membership Corp. v. Ga. Power Co.*, 229 Ga. 348, 191 S.E.2d 33 (1972).⁷ Unquestionably then such contracts as existed between the appellants and the municipality were conditioned upon the continued existence of the City of Mountain View.

Moreover, to uphold the appellants' claims would have the effect precluding the exercise by the General Assembly of Georgia of one of its most important powers—the creation and abolition of municipalities in the State of Georgia—an essential attribute of State sovereignty. See *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).⁸ The holdings of this Court interpreting the reach of the Contract Clause do not, however, require this surrender by the State of such an essential attribute of its sovereignty. *United States Trust Co. v. New Jersey*, 431 U.S. 1, 23 (1977).

Based on the foregoing, it is manifest that the termination of municipal business licenses incidental to the repeal of a municipal charter does not violate the Contract Clause.

Thus, the question on which the decision of this cause depends is so insubstantial and the decision by the Supreme Court of Georgia is so obviously correct as not to need further argument.

⁷ "... [M]unicipalities are creatures of the legislature, and their existence may be established, altered, enlarged or diminished, or utterly abolished by the legislature." 229 Ga. at 352, 191 S.E.2d at 37.

⁸ "We [the Court] freely recognize the breadth and importance of this aspect of the State's political power." 364 U.S. at 342.

CONCLUSION

For the reasons stated herein, this appeal should be either dismissed or affirmed.

Respectfully submitted,

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

DON A. LANGHAM
First Assistant
Attorney General

MICHAEL J. BOWERS
Senior Assistant
Attorney General

R. DOUGLAS LACKEY
Assistant Attorney General

Please serve:

MICHAEL J. BOWERS
132 State Judicial Building
Atlanta, Georgia 30334
(404) 656-3330

January, 1979

APPENDIX A

LICENSE

City of

MOUNTAIN VIEW

No. 1743

Received of Jet Stop Market Inc Mountain View, Ga., Jan 6 1978
Andrewhill & Pine Ltr \$100.00
Dollars

Purchased License for James L. Fox

Expires 12/31/77 James L. Fox CITY CLERK
NOT TRANSFERABLE

2a

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA

January 12, 1979

I hereby certify that the foregoing page, hereto attached, contains a true and correct copy of page 13 (Exhibit "B" to the Complaint) of the trial court clerk's record in the Supreme Court of Georgia in Case No. 33625, Hazel Ruth Logan et al. v. W. E. Strickland, Comr., et al., as appears from the records and files in this office.

Witness my signature and the seal of the said court
hereto affixed the day and year first above written.

[SEAL]

/s/ JOLINE B. WILLIAMS, Clerk

APPENDIX B

Not Transferrable

LICENSE
FOR ALCOHOLIC BEVERAGE
City of
MOUNTAIN VIEW

No. 101

Mountain View, Ga., Jan. 6 1978

Received of

Get Star Market, Inc.

for

Twenty Thousand, Seven Hundred and Fifty Dollars

License for

John H. H. and H. H. H.

Expires

December 31, 1978

City Clerk

James H. H.

"This license is a mere privilege, subject to be revoked and annulled by the Mayor and Council of the City of Mountain View with or without cause, and with or without notice or hearing."

2b

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA

January 12, 1979

I hereby certify that the foregoing page, hereto attached, contains a true and correct copy of page 14 (Exhibit "C" to the Complaint) of the trial court clerk's record in the Supreme Court of Georgia in Case No. 33625, Hazel Ruth Logan et al. v. W. E. Strickland, Comr., et al., as appears from the records and files in this office.

Witness my signature and the seal of the said court
hereto affixed the day and year first above written.

[SEAL]

/s/ JOLINE B. WILLIAMS, Clerk

APPENDIX C

LICENSE

City of

NO 1742

MOUNTAIN VIEW

Mountain View, Ga.

June 6, 1978

Received of

Yellow Jacket #3

\$100.00

Dollars

Five Hundred + 00/100

License for

Henry Allen

Expires December 31, 1978

CITY CLERK

NOT TRANSFERABLE

EXHIBIT "D"

2c

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA

January 12, 1979

I hereby certify that the foregoing page, hereto attached, contains a true and correct copy of page 15 (Exhibit "D" to the Complaint) of the trial court clerk's record in the Supreme Court of Georgia in Case No. 33625, Hazel Ruth Logan et al. v. W. E. Strickland, Comr., et al., as appears from the records and files in this office.

Witness my signature and the seal of the said court hereto affixed the day and year first above written.

[SEAL]

/s/ JOLINE B. WILLIAMS, Clerk

APPENDIX D

Not Transferrable

LICENSE
FOR ALCOHOLIC BEVERAGE
City of
MOUNTAIN VIEW

No. 122

Mountain View, Ga., Jan 6 19 78

Received of Yellow Jacket #3
for the sum of One Hundred & Fifty & no/100 Dollars
License for sale of packaged beer & wine

Expires December 31, 1978 City Clerk Gene Williams

"This license is a mere privilege, subject to be revoked and annulled by the Mayor and Council of the City of Mountain View with or without cause, and with or without notice or hearing."

2d

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA

January 12, 1979

I hereby certify that the foregoing page, hereto attached, contains a true and correct copy of page 16 (Exhibit "E" to the Complaint) of the trial court clerk's record in the Supreme Court of Georgia, in Case No. 33625, Hazel Ruth Logan et al. v. W. E. Strickland, Comr., et al., as appears from the records and files in this office.

Witness my signature and the seal of the said court
hereto affixed the day and year first above written.

[SEAL]

/s/JOLINE B. WILLIAMS, Clerk

APPENDIX E

**IN THE SUPREME COURT
STATE OF GEORGIA**

HAZEL RUTH LOGAN, Individually;
GRADY MOSS, Individually;
YELLOW JACKET MARKET, INC.:
H. W. SMITH, Individually;
JET STOP MARKETS, INC.:
EMORY B. BAZEMORE, Individually;
Appellants,

CASE NOS.
33625

vs.

W. A. STRICKLAND, Georgia State
Revenue Commissioner, ARTHUR K.
BOLTON, Attorney General of the
State of Georgia; ROBERT A. "BOB"
DEYTON, Sheriff of Clayton County;
HOWARD SMITH, Chief of Police of
Clayton County; COL. J. H. COFER,
Commissioner of Georgia Department of
Public Safety; COUNTY OF CLAYTON
COUNTY COMMISSIONERS OF
CLAYTON COUNTY:

ENUMERA-
TION OF
ERRORS

Appellees.

1.

The Honorable HUBERT C. MORGAN, Judge Emeritus for the Superior Court of the Clayton Judicial Circuit, erred in *failing* to hold that House Bill 1228 was unconstitutional for the reason that it was in violation of Art. III, Section VII, Paragraph IX of the Constitution of the State of Georgia (Georgia Code Ann. Sec. 2-1309) in that the notice of the intention to apply for the said local legislation was not published as required by the said constitutional provision and in that the "Affidavit of Publication" attached to House Bill 1228 and being made a part thereof is insufficient and defective on its face and does not comply with the requirements of Art. III,

Section VII, Paragraph IX of the Constitution of the State of Georgia.

2.

The Honorable HUBERT C. MORGAN, Judge Emeritus for the Superior Court of the Clayton Judicial Circuit, erred in *failing* to hold that Act No. 757, by its abolishment of the Charter for the City of Mountain View, has the direct effect of impairing the obligations of the contractual licenses previously entered into between the City of Mountain View and the Appellants, YELLOW JACKET MARKET, INC., and JET STOP MARKETS, INC., and therefore, the said Act No. 757 is unconstitutional for the reason that it is in violation of Article I, Section I, Paragraph VIII of the Constitution of the State of Georgia (Georgia Code Ann. Sec. 2-107).

3.

The Honorable HUBERT C. MORGAN, Judge Emeritus for the Superior Court of the Clayton Judicial Circuit, erred in *failing* to hold that Act No. 757, by its revocation of the Charter for the City of Mountain View, is in contravention of Article III, Section VII, Paragraph IX of the Constitution of the State of Georgia in that it abolishes the offices of eight (8) officials for the City of Mountain View who have been duly elected by the vote of the citizens of the municipality of Mountain View said offices being abolished without the local act accomplishing the same being approved by the people within the municipality of Mountain View by a referendum on the question.

STATEMENT OF JURISDICTION

The Supreme Court of Georgia, rather than the Court of Appeals, has jurisdiction of this case on appeal for the reason that the Constitutionality of a statute of the State of Georgia has been drawn in question.

Respectfully submitted,

/s/ DOUGLAS N. PETERS

DOUGLAS N. PETERS

Attorney for Appellants

Suite 440
First National Bank Building
Decatur, GA 30030
377-0581

CERTIFICATE OF SERVICE

I, Douglas N. Peters, do hereby certify that I have this date served a copy of the within and foregoing Enumeration of Errors in Case Numbers 33625, 33626, and 33627 upon:

MR. JOHN R. McCANNON
Clayton County Attorney
114 N. McDonough Street
Jonesboro, GA 30236

MR. GEORGE E. GLAZE
Assistant Clayton County Attorney
120 N. McDonough Street
Jonesboro, GA 30236

MR. MICHAEL J. BOWERS
Senior Assistant Attorney General
132 State Judicial Building
Atlanta, GA 30334

by depositing the same in the United States Mail in a properly addressed envelope with adequate first class postage thereon.

This 1st day of May, 1978.

/s/ DOUGLAS N. PETERS

DOUGLAS N. PETERS
Attorney for Appellants

SUPREME COURT OF THE STATE OF GEORGIA CLERK'S OFFICE, ATLANTA

January 12, 1979

I hereby certify that the foregoing three pages, hereto attached, contain a true and correct copy of the enumeration of errors filed in the Supreme Court of Georgia in Case No. 33625, Hazel Ruth Logan et al. v. W. E. Strickland, Comr., et al., as appears from the records and files in this office.

Witness my signature and the seal of the said court hereto affixed the day and year first above written.

[SEAL]

/s/ JOLINE B. WILLIAMS, Clerk

JAN 22 1979

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78 1,056

HAZEL RUTH LOGAN, Individually; GRADY MOSS,
Individually; YELLOW JACKET MARKET, INC.;
H. W. SMITH, Individually; JET STOP MARKETS,
INC.; EMORY B. BAZEMORE, Individually;

Appellants,

versus

W. A. STRICKLAND, Georgia State Revenue Commis-
sioner; ARTHUR K. BOLTON, Attorney General of the
State of Georgia; ROBERT A. "BOB" DEYTON, Sheriff
of Clayton County; HOWARD SMITH, Chief of Police
of Clayton County; COL. J. H. COFER, Commissioner
of Georgia Department of Public Safety; COUNTY OF
CLAYTON; COUNTY COMMISSIONERS OF CLAY-
TON COUNTY;

Appellees.

**APPEAL FROM THE SUPREME COURT
OF GEORGIA**

MOTION TO DISMISS

Attorneys for Appellees

JOHN R. McCANNON

GLAZE, McNALLY AND GLAZE

CLAYTON COUNTY, ET AL.

120 N. McDonough Street

Jonesboro, Georgia 30236

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IN THE Supreme Court of the United States

OCTOBER TERM, 1978

No.

HAZEL RUTH LOGAN, Individually; GRADY MOSS,
Individually; YELLOW JACKET MARKET, INC.;
H. W. SMITH, Individually; JET STOP MARKETS,
INC.; EMORY B. BAZEMORE, Individually;

Appellants,

versus

W. A. STRICKLAND, Georgia State Revenue Commis-
sioner; ARTHUR K. BOLTON, Attorney General of the
State of Georgia; ROBERT A. "BOB" DEYTON, Sheriff
of Clayton County; HOWARD SMITH, Chief of Police
of Clayton County; COL. J. H. COFER, Commissioner
of Georgia Department of Public Safety; COUNTY OF
CLAYTON; COUNTY COMMISSIONERS OF CLAY-
TON COUNTY;

Appellees.

APPEAL FROM THE SUPREME COURT OF GEORGIA

MOTION TO DISMISS

Now come Appellees, Robert A. Deyton, Howard
Smith, Clayton County, and the County Commissioners
of Clayton County, and through their attorneys, move
this Court pursuant to Rule 16 of the Rules of the Supreme
Court of the United States, to dismiss the above styled
action as there exists no substantial federal question and
the case has become moot.

BRIEF IN SUPPORT OF MOTION TO DISMISS STATEMENT OF THE CASE

On January 20, 1978, the Governor of the State of Georgia, signed into law a local act, No. 757 of the Georgia Legislature repealing the city charter of a Georgia municipality known as the City of Mountain View. Said act was submitted to the Justice Department of the United States for approval pursuant to the Voting Rights act of 1964. Appellants, certain city officials and municipal licenseholders instituted lawsuits in the Superior Court of Clayton County, Georgia, claiming that such an act violated, among other issues raised, the State and Federal Constitutions, prohibiting the impairment of the obligation of contract.

Named as defendants in the suit were various officials of the County and the Attorney-General of the State of Georgia.

On February 28, 1978, a hearing was held in the Superior Court and the constitutionality of the Act was upheld. Thereafter, the plaintiffs (now appellants) appealed to the Supreme Court of Georgia.

On September 6, 1978, the Court unanimously upheld the constitutionality of the Act and specifically held that the repeal of a municipal charter in Georgia does not operate to impair the obligation of contracts claimed under by the appellants in the action in violation of the State and Federal Constitution.

I.

APPELLANTS FAIL TO RAISE A SUBSTANTIAL FEDERAL QUESTION AS THEY RAISE ISSUES NOT PREVIOUSLY BEFORE THE SUPREME COURT OF GEORGIA AND THEREFORE BARRING REVIEW OF THIS COURT.

A motion to dismiss is proper before this Court where a federal question is not properly presented. *Pearson v. Dodd*, 429 U.S. 396, 50 L. Ed. 2d 574, 97 S. Ct. 581. Appellees contend that appellants have not presented a federal question properly.

In appellants' original complaint filed in the Superior Court of Clayton County, State of Georgia, there were raised no claims of denials of federal constitutional rights. The complaint, as to the issue of impairment of the obligation of contract, was based solely on the Georgia Constitutional provision relating to such issues. Ga. Const., Art. I, Sec. I, Par. VII (Georgia Code Ann., § 2-107). This Court has restrained from hearing a federal question where such was not raised at the trial court. *Erie R. Co. v. Purdy*, 185 U.S. 148, 46 L. Ed. 847, 22 S. Ct. 605.

Further, the Supreme Court of Georgia decided that impairment of the obligation of contract issue solely on state constitutional and not federal grounds. The decision was therefore, based on an adequate state ground which has prompted this Court to refrain from exercising jurisdiction over an appeal. *N. O. & T. P. R. Co. v. Slade*, 216 U.S. 78, 54 L. Ed. 390, 30 S. Ct. 230.

Appellants have also introduced other issues on this appeal not raised before the Georgia courts. This relates to appellants' claim that the State Legislature failed to select policy alternative to minimize the effect of aboli-

tion of the City of Mountain View upon holders of licenses. As these issues were not raised below they should be properly before this Court. *Paschall v. Christie—Stewart*, 414 U.S. 100, 38 L. Ed. 2d 298, 94 S. Ct. 313 reh den 414 U.S. 1138, 38 L. Ed. 2d 736, 94 S. Ct. 884.

Therefore, as these issues are not properly before this Court and the decision below rested on adequate state grounds, this appeal should be dismissed for want of jurisdiction.

II.

AS APPELLANTS' MUNICIPAL LICENSES HAVE EXPIRED BY THEIR TERMS THE PRESENT CONTROVERSY HAS BECOME MOOT.

All licenses, held by appellants, either alcoholic beverage licenses or grocery business licenses, and which were the subject of the litigation in the State Courts, expired on December 31, 1978. Any prior or subsequent licenses are not a proper subject of the present controversy as they were not before the trial court of the Supreme Court of Georgia.

Federal courts are without power to decide moot questions. *St. Pierre v. United States*, 319 U.S. 41, 87 L. Ed. 1199, 63 S. Ct. 910. This is nothing about the present controversy which is capable of repetition, yet evades review, because the municipal licensing power no longer exists because the municipality has been abolished.

III.

THE REPEAL OF A MUNICIPAL CHARTER WHICH INCIDENTALLY ABOLISHES THE LICENSING POWER OF THE MUNICIPALITY IS A STATE QUESTION.

Appellants contend that certain alcoholic beverage licenses they hold constitute contracts between them and the City of Mountain View. They claim the abolition of the municipality would impair the obligations of these alleged contracts in violation of the Constitution of the State. This presents no federal question but is a question of state law and interpretation of the Constitution of the State of Georgia.

It is a recognized fact that a license is not a contract within the State of Georgia. Georgia Code Ann., §20-117 provides:

"Where, in the exercise of the police power, a license is issued, the same is not contract, but only a permission to enjoy the privilege for the time specified, on terms stated. It may be abrogated."

"Police power" is such a governmental authority as is an inherent attribute of state sovereignty. It can belong to municipal corporations only when and as conferred by the State. McQuillian, *Municipal Corporations*, Sec. 24.35, Pg. 551. The power which a municipal corporation attempts to exercise must come from the source of the state of police power, the State Legislature. *Hayes v. Town of Cedar Grove*, 126 W. Va. 828, 30 S.E. 2d 726, 732, 156 ALR 702.

The power to issue such licenses was delegated by the State to the City of Mountain View. Any power the City of Mountain View had to issue such licenses was derived from the State. In *Mayor and Council of Savannah v.*

Savannah Co., 202 Ga. 559, 43 S. E. 2d 704, the Supreme Court of Georgia stated:

"The policy of the State in dealing with intoxicating liquors was fixed by the State law. Municipalities are bound by that law and can lawfully regulate the liquor business within their corporate limits to the extent that the law specifies." *ID* at 571.

Thus, if the State delegates this police power and the State abolishes the municipality, then the State exercises this power directly rather than indirectly through the municipalities. "A license is usually regarded as a mere privilege and not a contract, and it may be terminated by a repeal of the law under which it was granted." McQuillian, *Municipal Corporations*, Sec. 26.86, Pg. 206.

Appellants have further claimed to have vested rights which will be diminished or impaired by the General Assembly, without process or without equal protection, *City of Atlanta v. Hill*, 238 Ga. 413, 283 S. E. 2d 193 and *Hornsby v. Allen*, 326 F. 2d 605. While the Appellants may, under the opinion of such cases, now have a right to such licenses from the granting authority, so long as they meet all of such authority's requirements, they have not acquired a right greater than that granted by the municipality. A removal of the power to grant such a license by the abolition of the licensing authority does not deny the Appellants of either due process or equal protection. When the General Assembly introduced local legislation which received the constitutional majority and became law, and which has the incidental effect of revok-

ing licenses issued by the abolished city, due process of law was adhered to. The legislative process in this case is due process.

Thus, where the power to license is repealed by the State by the repeal of a municipal charter, any licenses issued by the municipality under the delegated power are terminated by due process of law, and without any contravention of equal protection.

IV.

CONCLUSION

Appellants have failed to properly raise a federal question and the present controversy has further been mooted by the expiration of their licenses. The question of licensing power is a proper question of State law and should be decided by the state courts.

Respectfully submitted,

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